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9 **BEFORE THE STATE WATER RESOURCES**
10 **CONTROL BOARD**

11 PART 2 - HEARING IN THE MATTER OF
12 CALIFORNIA DEPARTMENT OF WATER
13 RESOURCES AND UNITED STATES
14 BUREAU OF RECLAMATION REQUEST
15 FOR A CHANGE IN POINT OF DIVERSION
16 FOR CALIFORNIA WATER FIX

17 **ANTIOCH'S OPPOSITION TO**
18 **DWR'S OBJECTION TO**
19 **ANTIOCH'S SUR-REBUTTAL**
20 **OPINIONS 1 AND 2**

21 Antioch opposes DWR's objections to the Sur-Rebuttal Testimony (Part 2) of Dr.
22 Susan Paulsen as to Opinions 1 and 2 in response to Opinion 5 of DWR witness Dr.
23 Chandra Chilmakuri (DWR Exhibit 1217). While it is true that some of the testimony
24 provided in Antioch's Sur-Rebuttal Opinions 1 and 2 is based on evidence and prior
25 testimony existing in the record, Dr. Chilmakuri's Opinion 5 attempts to misstate and
26 mischaracterize Antioch's/Dr. Paulsen's prior testimony. Antioch's Opinions 1 and 2 are
27 necessary and new information required to clarify the record, disprove Dr. Chilmakuri's
28 misstatements and mischaracterizations of Dr. Paulsen's testimony, and provide
critically useful information to the Board regarding DWR's misleading information
contained in DWR Exhibit 1217.

1 **1. Antioch Opinion 1 seeks to clarify misstates and mischaracterizations by Dr.**
2 **Chilmakuri**

3 Misstatement #1 by DWR at Exhibit 1217, p. 13:12-15: Dr. Chilmakuri states: “As noted
4 above, and indicated by Dr. Paulsen’s own analysis (Antioch-500 ERRATA), when the
5 CWF scenarios are compared to the appropriate baseline (NAA), CWF is not expected
6 to impact salinity conditions for City of Antioch’s Delta water supply. **Dr. Paulsen**
7 **acknowledged this during cross-examination.** (Transcript Volume 21 p. 141 4:11, p.
8 142: 5:12, and p. 143:20:25.)”

9 Antioch’s Response #1:

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- 11 • Dr. Chilmakuri’s statement is misleading and takes Dr. Paulsen’s prior statement out
12 of context. In the transcript cited above, DWR’s cross-examination questions to Dr.
13 Susan Paulsen (by Ms. Ansley) only concerned scenarios H3 and H4 – DWR did not
14 ask about, and Dr. Chilmakuri’s statement is not correct, for scenario Dr. Paulsen’s
15 testimony regarding Boundary 1 impact conditions at Antioch. Dr. Chilmakuri’s
16 testimony improperly implies Dr. Paulsen’s testimony was referring to all modeling
17 scenarios..
 - 18 • By presenting the table summarizing DWR’s model results in Antioch’s Sur-Rebuttal
19 (Opinion 1), Dr. Paulsen demonstrates that the City would lose 340 days of useable
20 water over the 16-year simulation period (B1 compared to NAA). The point is to
21 demonstrate that DWR’s statement, and the conclusions DWR derives from that
22 statement, are false, and DWR’s testimony to the Board (DWR Exhibit 1217) was
23 misleading.
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25 Misstatement # 2 by DWR at Exhibit 1217, Figure 5: In DWR-1217, DWR presents only
26 long-term (16-year) average salinity results at Antioch (See DWR-1217 Figure 5) and
27 days of exceedance of the 250 mg/L chloride objective at Pumping Plant #1.
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1 Antioch's Response #2: Pumping Plant #1, relied on by Dr. Chilmakuri, ***is not the***
2 ***location of Antioch's intake.*** DWR has made conclusions in DWR 1217 about the
3 salinity conditions at Antioch's intake that are not supported by the evidence and
4 testimony. The point of re-presenting results here is to demonstrate clearly that, contrary
5 to DWR's assertions, Antioch's prior analysis cannot be used to support Dr. Chilmakuri's
6 conclusions in DWR-1217.
7

8 Misstatement # 3 by DWR at Exhibit 1217, Fall X2: DWR's assertion in DWR-1217
9 Opinion 5 that Fall X2 should be independent of the change petition proceeding is based
10 solely on a discussion of impacts to fish and an adaptive management.
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12 Antioch's Response #3: Antioch's Opinion 1 clarifies that because B1 is the only
13 scenario without Fall X2, if Fall X2 is eliminated in a separate proceeding, the SWRCB
14 should not rely on model results from any other modeling scenario presented during this
15 proceeding. In other words – DWR has no basis for any conclusion of no-impact to
16 water quality for recreational uses or other public trust resources (e.g. non-fish related
17 impacts) if Fall X2 is eliminated, because Boundary 1 (with no Fall X2) shows serious
18 water quality impacts related to the CWF, and all other scenarios (with Fall X2) would
19 be moot/irrelevant if Fall X2 is not required.
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21 Misstatement # 4 by DWR at Exhibit 1217, at p. 12:24-26: Dr. Chilmakuri states that
22 “Dr Paulsen's alleged impacts to City of Antioch salinity conditions are based on
23 incorrect comparisons of CWF scenarios to the EBC2 scenario and pre-1918 historic
24 conditions.”

25 Antioch's Response #4: Antioch re-presented results for the NAA scenario to
26 demonstrate that significant salinity impacts are seen relative to both EBC2 and the NAA
27 scenarios. Further, both EBC2 and NAA utilize Fall X2. DWR has not presented a
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1 baseline scenario **without Fall X2 operations** – if Fall X2 is eliminated, independent of
2 the SWRCB’s WaterFix proceeding, DWR no longer has a representative baseline
3 condition including for evaluation of impacts to recreation and public trust resources.
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6 **2. Antioch Opinion 2 seeks to clarify misstates by Dr. Chilmakuri**

7 Misstatement No. 1 (Opinion 2) DWR-1217 at p. 12:24-26: Dr, Chilmakuri states that
8 “Dr. Paulsen’s alleged impacts to City of Antioch salinity conditions are based on
9 incorrect comparisons of CWF scenarios to the EBC2 scenario and pre-1918 historic
10 conditions.”

11 Antioch’s Response:

12 As stated in Antioch-700 p. 8:8-11, “the City provided information on ‘natural’ (pre-1918)
13 water quality for the SWRCB’s use in the development of flow criteria for the WaterFix
14 project and for use by other parties in evaluating the impacts of reduced flows and
15 increased salinity on native species.” Antioch did not use “natural” salinity or flows in
16 developing recommendations for flow criteria.
17

18 Further, EBC2 is useful in highlighting water quality changes. But even if Antioch had
19 evaluated only NAA, the City would have reached the same conclusions and requested
20 the same flow criteria – i.e., include Fall X2 and operate to meet D-1641 250 mg/L
21 chloride objectives at Antioch. The point of Antioch-700 Opinion 2 was to highlight how
22 DWR-1217 presented information in way intended to **obscure** Antioch’s point and
23 obscure information being presented to the Board. Opinion 2 of Antioch’s sur-rebuttal
24 clarifies how Antioch relied upon DWR’s model results and developed recommended
25 flow criteria.
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Conclusion

DWR specifically targeted Dr. Paulsen’s opinions in Dr. Chilmakuri’s rebuttal testimony. This rebuttal testimony in Antioch’s Opinion was intended not to provide useful or new information to the Board but rather to mischaracterize and obscure Dr. Paulsen’s prior testimony. Neither cross-examination nor closing arguments are sufficient to provide the detail and basis necessary to explain DWR’s misstatements and mischaracterizations of Dr. Paulsen’s testimony. It is essential to understanding the potential project impacts on Antioch for Dr. Paulsen to address DWR’s misstatements and mischaracterizations directly by way of Opinions 1 and 2 – and this is new information in that it clarifies for the Board and the record the impacts of the CWF. DWR could have chosen to cross-examine Dr. Paulsen but elected not to do so.

Respectfully submitted,

Dated: Oct. 2, 2018

MATTHEW EMRICK

Matthew Emrick, Special Counsel on behalf of the City of Antioch.